

EXHIBIT A

From: [Jennifer B. Maisel](#)
To: [Hurst, Annette L.](#)
Cc: [carrie.beyer](#); [NewYorkTimes_Microsoft_OHS](#); [#NewYorkTimes-Microsoft-FDBR](#); [NYT-AI-SG-Service@simplelists.susmangodfrey.com](#); [DailyNews-AI-RFEM](#); [OpenAICopyright](#); [openaicopyrightlitigation.lwteam@lw.com](#); [KVP-OAI](#)
Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft
Date: Monday, November 18, 2024 2:42:17 PM

Dear Annette,

We are not proposing more than 800 topics. We have proposed two topics. And, as we have told you repeatedly, the purpose of the deposition is to identify what documents (or data) Microsoft has or can create in order to show which of the News Plaintiffs' works have been used to create output from Microsoft's GAI products, what content has been outputted, how many times that has occurred, and in response to what queries—along with the specifics of how to search Microsoft's logs for that information. It does not seem to us that you should have a hard time preparing a Microsoft witness to testify on these issues.

Despite the simplicity of our request, Microsoft has offered no timeline on which it will make a knowledgeable witness available for deposition. The News Plaintiffs would like to take that deposition before December 20, and we would like to do so in the United States. Will you commit here and now to making such a witness available?

I am not refusing a meeting, but in view of the Court's deadline of today to file any motions to be heard at the December 3 conference, we would need to speak as soon as possible. I am available to discuss 3:30-5pm eastern today if you think a conversation would be productive.

Thanks,
Jen



Jennifer Maisel (she/her)
Rothwell, Figg, Ernst & Manbeck, P.C.
901 New York Avenue, N.W.
Suite 900 East
Washington, D.C. 20001

Main Number: 202.783.6040
Direct Number: 202.626.3548
Fax Number: 202.783.6031
Email: jmaisel@rothwellfigg.com
Website: www.rothwellfigg.com

-

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attachments.

From: Hurst, Annette L. <ahurst@orrick.com>
Sent: Monday, November 18, 2024 1:25 PM
To: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Cc: carrie.beyer <carrie.beyer@faegredrinker.com>; NewYorkTimes_Microsoft_OHS <NewYorkTimes_Microsoft_OHS@orrick.com>; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>; OpenAICopyright <OpenAICopyright@mofo.com>; openaicopyrightlitigation.lwteam@lw.com; KVP-OAI <KVPOAI@keker.com>
Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

Jen:

Since you steadfastly refuse to have a meeting to discuss the issues surrounding the user data, let me point out a few of the things that I would have said in such a meeting.

As I've previously noted, Microsoft is willing to produce a witness.

These subjects, however, are not sufficiently specific 30(b)(6) topics. They encompass numerous separate topics, some of which have nothing to do with the storage, maintenance, and nature of the data (such as separate business reporting that may occur). Additionally, your topic directed to the data field document encompasses numerous items that have no relevance at all to this lawsuit, and that is obvious from the documentation we provided. If you had even looked briefly at those documents you would be aware that the field listing encompasses more than 800 items. So you are trying to force us to prepare a witness on more than 800 topics where the vast majority of them have no relevance whatsoever.

Your approach is inherently problematic but it is especially so because many of the Microsoft employees who work with this data are located in China. In order for us to prepare a 30(b)(6) witness, we need the complete deposition notice, topic by topic, so we can plan to gather information from a global group of employees, a number of whom do not speak English as their first language. This is also a significant reason why, along with the holidays, we cannot commit to conducting this deposition before the end of the year.

Since you would rather have the grudge than have an actual discussion designed to produce the conditions for a deposition, we will save the remainder of our remarks for the Court.

Annette

From: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Sent: Friday, November 15, 2024 1:33 PM
To: Hurst, Annette L. <ahurst@orrick.com>

Cc: carrie.beyer <carrie.beyer@faegredrinker.com>; NewYorkTimes_Microsoft_OHS <NewYorkTimes_Microsoft_OHS@orrick.com>; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>; OpenAICopyright <OpenAICopyright@mofo.com>; openaicopyrightlitigation.lwteam@lw.com; KVP-OAI <KVPOAI@keker.com>

Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

[EXTERNAL]

Annette – we disagree. We think the categories are sufficiently specific:

15. The existence, organization, preservation, storage, and deletion of output data reflecting user sessions on Your Generative AI Products and Services, as well as of reports on, metrics on, or analysis of such output data.

16. The meaning of data fields contained in sample output logs produced by Microsoft at MSFT_NEWS_000624874, MSFT_NEWS_000624875, and MSFT_NEWS_000624876, as well as of data fields contained in other output logs maintained by Defendants.

In any event, you have not agreed to provide a witness on the output logs before the end of 2024.

BR,
Jen



Jennifer Maisel (she/her)
Rothwell, Figg, Ernst & Manbeck, P.C.
901 New York Avenue, N.W.
Suite 900 East
Washington, D.C. 20001

Main Number: 202.783.6040
Direct Number: 202.626.3548
Fax Number: 202.783.6031
Email: jmaisel@rothwellfigg.com
Website: www.rothwellfigg.com

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From: Hurst, Annette L. <ahurst@orrick.com>
Sent: Friday, November 15, 2024 4:15 PM
To: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Cc: carrie.beyer <carrie.beyer@faegredrinker.com>; NewYorkTimes_Microsoft_OHS <NewYorkTimes_Microsoft_OHS@orrick.com>; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>; OpenAICopyright <OpenAICopyright@mofo.com>; openaicopyrightlitigation.lwteam@lw.com; KVP-OAI <KVPOAI@keker.com>
Subject: Re: NYT/NYDN - Requests for Inspection to Microsoft

Jen:

Topic subject matters are not a deposition notice. The two subjects provided are so broad as to be meaningless in terms of witness preparation.

Please give us an actual deposition notice that is informed by study of the contents of what we provided.

Annette Hurst
Partner
Orrick Herrington & Sutcliffe

On Nov 15, 2024, at 12:16 PM, Jennifer B. Maisel <jmaisel@rothwellfigg.com> wrote:

[EXTERNAL]

Annette,

We provided the deposition topics to Microsoft after the October 30 conference, and they were attached as Exhibit 1 to the Parties' November 1 filing. I have reattached them here, and topic numbers 15-16 address log issues. I asked if Microsoft's position remains the same with respect to an early deposition on the log issues, and your response confirms we remain at an impasse.

Thanks,

Jen

<image001.jpg>

Jennifer Maisel (she/her)
Rothwell, Figg, Ernst & Manbeck, P.C.
901 New York Avenue, N.W.
Suite 900 East
Washington, D.C. 20001

Main Number: 202.783.6040
Direct Number: 202.626.3548
Fax Number: 202.783.6031
Email: jmaisel@rothwellfigg.com
Website: www.rothwellfigg.com

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From: Hurst, Annette L. <ahurst@orrick.com>
Sent: Friday, November 15, 2024 11:32 AM
To: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Cc: carrie.beyer <carrie.beyer@faegredrinker.com>; NewYorkTimes_Microsoft_OHS <NewYorkTimes_Microsoft_OHS@orrick.com>; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>; NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>; OpenAICopyright <OpenAICopyright@mofo.com>; openaicopyrightlitigation.lwteam@lw.com; KVP-OAI <KVPOAI@keker.com>
Subject: Re: NYT/NYDN - Requests for Inspection to Microsoft

Jen:

I don't see how we could possibly be at an impasse when you haven't even given us a proposed deposition notice, as I requested.

Your conflation of two issues that have nothing to do with one another does you no credit. The last time we had a meeting on this issue, you received answers to all of your questions and a voluntary production. You are the one wasting time bickering. If you won't meet and ask questions to further your understanding, that is your choice.

Be assured that we will not agree to multiple depositions on the same subject.

Annette Hurst
Partner
Orrick Herrington & Sutcliffe

On Nov 15, 2024, at 8:16 AM, Jennifer B. Maisel
<jmaisel@rothwellfigg.com> wrote:

[EXTERNAL]

Dear Annette,

Engaging in a repetitive back-and-forth has proven to be inefficient and is causing unnecessary delay in the discovery process. I will respond separately to Carrie, but it took *months* for Microsoft to identify [REDACTED] [REDACTED] and we still do not have an identification of [REDACTED] that Microsoft uses in its GAI products. Moreover, in view of your representations as to the complexity and burden of discovery into Microsoft's log data, we think that a deposition is appropriate now in order to streamline discovery for all parties involved instead of months down the road.

Indeed, Judge Wang encouraged us to be "flexible" and "creative" at the October 30 hearing:

"For example, I recall at the last conference I had suggested perhaps that some early 30(b)(6) depositions could help focus the document discovery in other depositions. I agree and I understand that's not normally how 30(b)(6) depositions are used. Usually they are used at the end of discovery but in a case like this where there are so many sub issues so hard fought and where, to some extent, some of the document[] discovery issues relating to the training of the defendant's generative AI, it might be productive to have a broader overview 30(b)(6) that's without prejudice to future depositions." Tr. at 8:3-13.

All of this can be resolved with a simple custodial deposition, including as to log data. I understand that we are at an impasse as to the timing of such a deposition and as to its nature.

BR,
Jen

<image001.jpg>

Jennifer Maisel (she/her)
Rothwell, Figg, Ernst & Manbeck, P.C.
901 New York Avenue, N.W.
Suite 900 East
Washington, D.C. 20001

Main Number: 202.783.6040
Direct Number: 202.626.3548
Fax Number: 202.783.6031
Email: jmaisel@rothwellfigg.com
Website: www.rothwellfigg.com

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From: Hurst, Annette L. <ahurst@orrick.com>
Sent: Thursday, November 14, 2024 1:49 PM
To: Jennifer B. Maisel <jmaisel@rothwellfigg.com>; carrie.beyer <carrie.beyer@faegredrinker.com>; NewYorkTimes_Microsoft_OHS <NewYorkTimes_Microsoft_OHS@orrick.com>; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>
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Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

Jen:

I'm going to address only the last issue (numbered fifth) regarding user data, others will address the other issues. I believe OpenAI also has an interest in the discussion of how the parties will handle user data, so I am copying them as well.

As you know from our last meet and confer session, we provided significant information about the Microsoft user data on an informal basis, answering many of your questions. We also followed up by

providing, on a purely voluntary basis, a complete file listing all available fields in the Microsoft user data, documentation regarding those fields, and a sample showing the nature of the data in the fields. Assembling that exemplar of the data was a significant undertaking. We have been more than cooperative and forthcoming with respect to Plaintiffs' efforts to analyze user data.

What we do not understand is why the information we have already provided has not resulted in any visible effort on your part. We expected that you would have questions for us, coming from your experts, to help them hone in on the information that they truly need in order to develop a querying strategy. We have heard nothing at all from you since we provided the sample data. We believe it will be much more efficient and effective to provide you with information informally to facilitate the discovery process, as has been occurring to date. A deposition should be reserved until your experts have a clear sense of their approach and understanding, with the objective of using the deposition to confirm the facts necessary to proceed with formulating queries, and to establish a foundation for admissibility if the subsequent queries are successful in extracting relevant data. Yet we haven't heard from you at all since we made our production.

Accordingly, from our perspective, the next step is not to jump right to a deposition about the user data. As your email acknowledges, this is not a custodial deposition. This is noncustodial data. Further, what you are seeking is information for your experts so that they can formulate an approach to extracting data for use in connection with their reports and the merits of the case. That is the same as any other discovery. Nevertheless, we recognize that there is an additional step with respect to this potential evidence since we cannot simply produce it or make it available for inspection. Instead, it must be inspected, if at all, through a process of queries. As I stated in our last meeting on this subject, which was weeks ago and *before* you had the samples and other data, we are willing to work with you to facilitate that process. Also, I've already said we are willing to consider a separate deposition on this topic. Indeed, as you know, we did that in the California GitHub case. We are trying to make this focused and effective.

We don't want to get into a situation where Plaintiffs efforts to query the Microsoft data are ineffective and you end up telling us you need multiple depositions. As with any other discovery, we should strive as much as possible for the deposition to be the end of the discovery process with respect to the particular subject matter at hand, not the beginning.

Additionally, before we could agree to any deposition on user data, we would need to see the proposed notice with all topics. That way, we can meet and confer over the scope as needed, identify the person(s) on our end who can serve as a witness, and engage

in a mutually cooperative scheduling process to figure out the date and location. We also expect to only do this once, so that will need to be a comprehensive deposition notice for all Plaintiffs in the New York cases. There is no way we are going to cram all of that in before December 3.

I am not available in the time frame you propose tomorrow to discuss this issue. I am available on Friday after 3 p.m. PT. I am also available Monday between 10 am and 12 PT.

Annette

From: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Sent: Thursday, November 14, 2024 9:28 AM
To: carrie.beyer <carrie.beyer@faegredrinker.com>;
NewYorkTimes_Microsoft_OHS
<NewYorkTimes_Microsoft_OHS@orrick.com>; #NewYorkTimes-
Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>
Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-
RFEM <DailyNews-AI-RFEM@rothwellfigg.com>
Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

[EXTERNAL]

Counsel,

We did not hear from you yesterday so I am following up on my email below. Despite discussing these issues for months, we still do not have a date certain as to when Microsoft will respond to our requests for inspection into Microsoft's source code, models, and training data. In fact, Microsoft thus far has refused to provide foundational information to help guide the bounds of this discovery, such as which versions of the GPT models Microsoft deployed and currently deploys in its GAI products and whether it has trained any such GPT models.

We also have not received a response to our request below for an early deposition to help inform the scope and manner of discovery into Microsoft's log data, and understand that Microsoft has categorically refused any early custodial 30(b)(6) deposition.

I can make myself available tomorrow from 2-4:30pm ET if we can resolve any of these outstanding issues. Otherwise News Plaintiffs will be forced to seek relief from the Court in view of the prejudice caused by Microsoft's continued delay.

Thanks,
Jen

<image001.jpg>

Jennifer Maisel (she/her)
Rothwell, Figg, Ernst & Manbeck, P.C.
901 New York Avenue, N.W.
Suite 900 East
Washington, D.C. 20001

Main Number: 202.783.6040
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From: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Sent: Friday, November 8, 2024 6:32 PM
To: Beyer, Carrie A. <carrie.beyer@faegredrinker.com>;
NewYorkTimes_Microsoft_OHS@orrick.com; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>
Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>
Subject: Re: NYT/NYDN - Requests for Inspection to Microsoft

Counsel,

I am writing to follow up on a few action items discussed during our October 23 meet and confer on News Plaintiffs' requests for inspection.

First, Microsoft committed to producing documentation on Bing Chat's [REDACTED] mentioned on the call. Please advise when Microsoft plans to produce this documentation. If this documentation has been produced, please identify the production numbers.

Second, Microsoft said it was working to gather the source code for Bing Chat's [REDACTED]. Please advise when Microsoft intends to make these source code items available for inspection.

Third, although Microsoft stated that it did not think BingBot was relevant to News Plaintiffs' claims, News Plaintiffs submit that Microsoft's crawler technology is relevant to the claims and request that Microsoft produce

source code for BingBot (or any other Microsoft crawlers) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Fourth, Microsoft explained that it is investigating which versions of the OpenAI models were deployed and are currently deployed in Microsoft's products. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

We further note that Microsoft's First Supplemental Responses to The Times's First Set of Interrogatories dated October 29 did not provide this information in response to Interrogatory No. 7 and ask that Microsoft supplement this interrogatory with this information as soon as possible.

Fifth, we are in receipt of Microsoft's sample log data. We believe that an early deposition—taken before the end of 2024—on issues pertaining to the log data, including how that data is maintained, stored, and used, would help all parties move forward efficiently and expediently into this area of discovery. While we understand that Microsoft is generally opposing an early custodial 30(b)(6) deposition can you please advise as to Microsoft's position on: (1) News Plaintiffs taking an early 30(b)(6) deposition directed to issues pertaining to the log data, without prejudice to News Plaintiffs taking additional 30(b)(6) depositions later in the case, and (2) the timing of any such deposition? For clarity, this request is not in lieu of News Plaintiffs' request for an early custodial 30(b)(6) deposition, but we want to understand Microsoft's position with respect to a deposition directed to the log issues.

Please provide an update by Wednesday 11/13.

Thank you,
Jen

<image002.png>

Jennifer Maisel (she/her)

Rothwell, Figg, Ernst & Manbeck, P.C.

901 New York Avenue, N.W.

Suite 900 East

Washington, D.C. 20001

Main Number: 202.783.6040

Direct Number: 202.626.3548

Fax Number: 202.783.6031

Email: jmaisel@rothwellfigg.com

Website: www.rothwellfigg.com

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From: Beyer, Carrie A. <carrie.beyer@faegredrinker.com>

Sent: Wednesday, October 16, 2024 10:56 AM

To: Jennifer B. Maisel <jmaisel@rothwellfigg.com>;

NewYorkTimes_Microsoft_OHS@orrick.com

<NewYorkTimes_Microsoft_OHS@orrick.com>; #NewYorkTimes-

Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>

Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com <[NYT-AI-SG-](mailto:NYT-AI-SG-Service@simplelists.susmangodfrey.com)

Service@simplelists.susmangodfrey.com>; DailyNews-AI-RFEM

<DailyNews-AI-RFEM@rothwellfigg.com>

Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

Hi Jen,

Thanks for your email. Let's talk tomorrow morning at 9 CT.

Best,

Carrie

From: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Sent: Tuesday, October 15, 2024 12:17 PM
To: Beyer, Carrie A. <carrie.beyer@faegredrinker.com>;
NewYorkTimes_Microsoft_OHS@orrick.com; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>
Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>
Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

This Message originated outside your organization.

Hi Carrie,

We have been trying to schedule this discussion for several weeks, and the time you proposed conflicts with the start of Plaintiffs' scheduled inspection of OpenAI's training data.

I can make myself available 9-10am CT on Thursday or Friday this week. Please confirm which date works best for you.

Thanks,

Jen

<image001.jpg>

Jennifer Maisel (she/her)

Rothwell, Figg, Ernst & Manbeck, P.C.

901 New York Avenue, N.W.

Suite 900 East

Washington, D.C. 20001

Main Number: 202.783.6040

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From: Beyer, Carrie A. <carrie.beyer@faegredrinker.com>

Sent: Monday, October 14, 2024 5:18 PM

To: Jennifer B. Maisel <jmaisel@rothwellfigg.com>;
NewYorkTimes_Microsoft_OHS@orrick.com; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>

Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>

Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

Hi Jen,

We're available for a call to discuss the requests for inspection on Wednesday at 10am CT or 11am CT. Please let us know what time works best for you.

Best,

Carrie

From: Beyer, Carrie A.
Sent: Friday, October 4, 2024 6:10 PM
To: 'Jennifer B. Maisel' <jmaisel@rothwellfigg.com>;
NewYorkTimes_Microsoft_OHS@orrick.com; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>
Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>
Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

Hi Jen,

Thanks for your email. Unfortunately we're not available on Monday and Tuesday but can meet later in the week. We'll follow up with some proposed times.

Best,

Carrie

Carrie A. Beyer

Partner

Pronouns: she/her/hers

carrie.beyer@faegredrinker.com

Connect: [vCard](#)

+1 312 569 1487 direct / +1 312 569 3000 fax

[Faegre Drinker Biddle & Reath LLP](#)

320 South Canal Street, Suite 3300
Chicago, Illinois 60606, USA

From: Jennifer B. Maisel <jmaisel@rothwellfigg.com>
Sent: Thursday, October 3, 2024 11:57 AM
To: NewYorkTimes_Microsoft_OHS@orrick.com; #NewYorkTimes-Microsoft-FDBR <NewYorkTimes-Microsoft-FDBR@faegredrinker.com>
Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>
Subject: RE: NYT/NYDN - Requests for Inspection to Microsoft

This Message originated outside your organization.

Following up on this. Please let us know your availability next Monday or Tuesday to discuss the outstanding items below.

<image001.jpg>

Jennifer Maisel (she/her)

Rothwell, Figg, Ernst & Manbeck, P.C.

901 New York Avenue, N.W.

Suite 900 East

Washington, D.C. 20001

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From: Jennifer B. Maisel

Sent: Tuesday, September 24, 2024 3:30 PM

To: NewYorkTimes_Microsoft_OHS@orrick.com; NewYorkTimes-Microsoft-FDBR@faegredrinker.com

Cc: NYT-AI-SG-Service@simplelists.susmangodfrey.com; DailyNews-AI-RFEM <DailyNews-AI-RFEM@rothwellfigg.com>

Subject: NYT/NYDN - Requests for Inspection to Microsoft

Counsel,

I write to follow up on a few outstanding items with respect to *The New York Times* and the *Daily News* plaintiffs' requests for inspection.

1. Request #1 (training data): Please advise as to the status of Microsoft's search for post-training data for its Copilot products and services, and a date certain as to when such post-training data will be produced or made available for inspection.
2. Request # 4 (models): In view of Ms. Beyer's email dated July 24, 2024, stating that Microsoft does not have its own, different versions of the GPT models used for its Copilot products, and OpenAI's position that Microsoft is best situated to identify and make available for inspection the versions of the GPT models that Microsoft uses for its products, please identify the specific versions of the GPT models that Microsoft has used and continues to use for its Copilot products and the manner in which Microsoft will make those specific versions of the GPT models available for inspection to Plaintiffs.
3. Requests #2-3, 5 (software/source code): Please advise as to what software components and source code Microsoft will make available in response to Requests #2 (tools used for training), #3 (tools used to build training datasets), and #5 (the Copilot products and services), and a date certain as to when those components will be made available for inspection.

4. Request #6 (logs): Please advise as to the status of Microsoft's collection and production of log files for its Copilot branded products and services and a date certain for production.

We are available to discuss these items further.

Best regards,

Jen

<image001.jpg>

Jennifer Maisel (she/her)

Rothwell, Figg, Ernst & Manbeck, P.C.

901 New York Avenue, N.W.

Suite 900 East

Washington, D.C. 20001

Main Number: 202.783.6040

Direct Number: 202.626.3548

Fax Number: 202.783.6031

Email: jmaisel@rothwellfigg.com

Website: www.rothwellfigg.com

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